



INTERIOR BOARD OF INDIAN APPEALS

Estate of Herbert Brant, Sr.

23 IBIA 97 (11/20/1992)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ESTATE OF HERBERT BRANT, SR. : Order Affirming Decision
:
: Docket No. IBIA 92-130
:
: November 20, 1992

This is an appeal from a January 7, 1992, Order Modifying Estate and Redetermining Heirs after Reopening entered in this estate by Administrative Law Judge Vernon J. Rausch. IP TC 465R 83-1. The appellant is Marjorie Brant, daughter of Herbert Brant, Sr. (decedent).

Appellant's notice of appeal was received by the Board on March 13, 1992. Kenneth Edward Brant, appellee here, contended that the notice was untimely. This contention apparently resulted from a misunderstanding of the Board's regulations. Under 43 CFR 4.310(a), a notice of appeal to the Board is considered filed on the date it is mailed. 43 CFR 4.310(c) provides that, when the last day of an appeal period falls on a Saturday, Sunday, Federal legal holiday, or other nonbusiness day, the period runs "until the end of the next day which is not a Saturday, Sunday, Federal legal holiday, or other nonbusiness day." In this case, the last day of the 60-day appeal period fell on Saturday, March 7, 1992. Appellant's notice of appeal was postmarked March 9, 1992, and was therefore timely.

Judge Rausch held a hearing on October 18, 1991, to consider the claim of Kenneth Edward Brant that he was the son of decedent. Appellant attended the hearing and opposed Kenneth's claim. She stated at the hearing that she was considering retaining an attorney. Judge Rausch gave her 60 days to decide whether to hire an attorney and to notify him of her decision. The Judge further stated that, unless he heard from her in that time, he would proceed to make his decision based upon the evidence before him. ^{1/} Appellant did not contact Judge Rausch further.

In an affidavit attached to her notice of appeal to the Board, appellant states:

^{1/} Among the evidence before Judge Rausch when he issued his order was a letter sent by appellant to Kenneth on November 26, 1991, in which she appeared to address him as her brother. The salutation of the letter read: "Hello Bro. Ken." The letter was sent to Judge Rausch by Kenneth.

3. I am appealing the foregoing decision because I do not believe that KENNETH EDWARD BRANT could possibly be the son of my father.

4. My reasons for disputing the decision are based on the fact that my father was either in Alaska in the military service or in the State Penitentiary when KENNETH would have been conceived. His birth certificate indicates that he was a full-term baby.

5. I have requested my father's military records from the archives but, as of this date, they have not arrived. I will submit them to the Board of Indian Appeals, as soon as they arrive.

6. I have also requested records from the State Penitentiary and will provide them to the Board when I receive them.

(Appellant's Affidavit at 1-2).

Appellant did not submit these documents. Nor, even though informed of her right to do so, did she file a brief or any further pleading in this appeal. The Board has stated on a number of occasions that an appellant bears the burden of proving error in the Administrative Law Judge's decision in an Indian probate matter. E.g., Estate of Jerry Elmer Coppock, 20 IBIA 212 (1991); Estate of Donald Paul Lafferty, 19 IBIA 90 (1990), and cases cited therein. The bare allegations made in appellant's affidavit are insufficient to carry that burden.

Further, appellant's promised new evidence was not submitted or even mentioned at the hearing before Judge Rausch. Normally, the Board is not required to consider evidence submitted for the first time on appeal. E.g., Estate of Warren Lewis Lincoln, 19 IBIA 118 (1990), and cases cited therein. Therefore, even if appellant had produced the promised evidence, the Board most likely would have declined to consider it.

Appellant has failed to carry her burden of proving error in Judge Rausch's decision. Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, his January 7, 1992, order is affirmed.

//original signed
Anita Vogt
Administrative Judge

//original signed
Kathryn A. Lynn
Chief Administrative Judge